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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER 1993 TERM

United States of America,
Petitioner,

vs.

Alfonso Lopez, Jr.,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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Brief for the States of Ohio and New York and the District of Columbia as Amici Curiae in Support of Petitioner

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

INTEREST OF THE AMICI CURIAE 1

ISSUE PRESENTED 3

SUMMARY OF ARGUMENT 3

ARGUMENT 4

I. THE CLOSE NEXUS BETWEEN INTERSTATE COMMERCE AND PROTECTION OF THE PUBLIC SAFETY, SUCH AS BY THE REGULATION OF FIREARMS, IS WELL ESTABLISHED BY PRIOR CONGRESSIONAL FINDINGS AND COMMON REASON 4

A. Prior Congressional Findings Have Shown the Close Nexus Between Interstate Commerce and Crime Legislation, Especially Laws Regulating the Possession and Use of Firearms 5

B. A Natural And Inevitable Link Between Economic Activity and Protection of the Public Safety Exists Regardless of Congressional Findings 9

II. CONGRESS IS NOT REQUIRED TO REITERATE OR REINFORCE ITS PREVIOUS FINDINGS ESTABLISHING PROPER FEDERAL AUTHORITY TO LEGISLATE IN A PARTICULAR AREA EACH TIME IT AMENDS ITS PRIOR STATUTES OR UNDERTAKES ANY RELATED INITIATIVES IN THAT SAME AREA 13

III. THE AREA OF CRIMINAL LAW ENFORCEMENT TO PROTECT THE PUBLIC SAFETY, WHICH IS MARKED HISTORICALLY BY CLOSE COORDINATION AND MUTUAL ASSISTANCE BETWEEN THE STATES AND THE FEDERAL GOVERNMENT, REPRESENTS THE NATION'S CLASSIC TRADITIONS OF COOPERATIVE FEDERALISM 16

A. State and Federal Cooperation in the Area of Law Enforcement, Which Is Desired by Citizens and Both Sovereigns, Should Be Permitted and Encouraged by This Court 16

B. Mutual Accommodation of State and Federal Interests in the Area of Law Enforcement Serves the Interests of the States As Well As Those of the Federal Government . . . 18

CONCLUSION 20

TABLE OF AUTHORITIES

CASES **Page**

Byars v. United States, 273 U.S. 28 (1927) 17

Elkins v. United States, 364 U.S. 206 (1960) 16, 17

Federal Energy Regulatory Comm'n v. Mississippi, 456 U.S. 742 18

Feldman v. United States, 322 U.S. 487 (1944) 17

Garcia v. San Antonio Metro. Transit Auth., 469 U.S. 528 (1985) 19

Gilbert v. Minnesota, 254 U.S. 325 (1920) 19

Heart of Atlanta Motel, Inc. v. United States, 379 U.S. 241 (1964) 11

Hodel v. Virginia Surface Mining & Reclamation Ass'n, Inc., 452 U.S. 264 (1981) 17, 18

New York v. United States, 112 S. Ct. 2408 (1992) 18

Pennsylvania v. Nelson, 350 U.S. 497 (1956) 19

Perez v. United States, 402 U.S. 146 (1971) . . . 13, 14, 15

United States v. Evans, 928 F.2d 858 (9th Cir. 1991) 12, 14

United States v. Hale, 978 F.2d 1016 (8th Cir. 1992), *cert. denied*, 113 S. Ct. 1614 (1993) 8, 14

Page

United States v. Johnson, Apr. 22, 1994 U.S. App. LEXIS 8370 (6th Cir. Apr. 22 , 1994) 12

Wickard v. Filburn, 317 U.S. 111 (1942) 11, 13, 15

STATUTES & RULES

18 U.S.C. §922 . . . . . 7, 14

18 U.S.C. §922(o) 7, 12

18 U.S.C. §922(p) 8

18 U.S.C. §922(q) . . . . . *passim*

18 U.S.C. §922(q)(3) 19

18 U.S.C. §2119 12

CONSTITUTIONAL PROVISIONS

U.S. Const., art. I, §8 . . . . . passim

U.S. Const. amend X 18

MISCELLANEOUS

Comprehensive Crime Control Act of 1990, Pub. L. No. 101-647, 104 Stat. 4789 8

Federal Firearms Act of 1938, 52 Stat. 1250 5

The Federalist, Nos. 15, 16 & 27 (A. Hamilton) 18

Page

Firearms Owners Protection Act,
Pub. L. No. 99-308, 100 Stat. 449 (1986) 7

Gun Control Act of 1968, Pub. L. No. 90-618,
82 Stat. 1213 5

Gun-Free School Zones Act, 18 U.S.C. §922(q) . . . . *passim*

Thomas Hobbes, *Leviathan* 9

H.R. Rep. No. 101-681(I), 101st Cong., 2d Sess.,
reprinted in 1990 U.S.C.C.A.N. 6472 8

H.R. Rep. No. 103-344, 103rd Cong., 1st Sess.,
reprinted in 1993 U.S.C.C.A.N. 1984 12

John Locke, *Of Civil Government* 10

National Firearms Act of 1934, 48 Stat. 1236 5

Omnibus Crime Control Safe Streets Act,
Pub. L. No. 90-351, 82 Stat. 197 (1968) 5

S. Rep. No. 1097, 90th Cong., 2d Sess.,
reprinted in 1968 U.S.C.C.A.N. 2112 6

Adam Smith, *The Wealth of Nations* 10

Undetectable Firearms Act of 1988,
Pub. L. No. 100-649, 102 Stat. 3816 8

Wechsler, *The Political Safeguards of Federalism:*
The Role of the States in the Composition
and Selection of the National Government,
54 Colum. L. Rev. 543 (1954) 19

INTEREST OF THE AMICI CURIAE

The States that have joined this brief as amici curiae share the Federal government's stated interest in addressing the growing problems of violence, especially gun-related violence, in and around today's schools. The States welcome the efforts made in this area by federal law-enforcement personnel, which help to supplement the continuing efforts of state and local officials. These problems, encountered every day in schools throughout the country, appear to be growing in frequency and severity. They thus threaten to subvert order in the schools and to destroy the normal function of schools as places where children go to adjust to one another and to learn, rather than as places where disputes end in deadly violence and children must fear for their lives.

The amici States obtain many delinquency adjudications and criminal convictions each year stemming from incidents involving guns in and around schools. They also are developing novel strategies to cope with the pervasive problems raised by the presence of guns in and around schools, such as posting metal detectors at building entrances, conducting frequent searches of lockers and possessions, and undertaking extensive dispute mediation programs, all aimed at restoring confidence in the concept of schools as safe havens where children can learn without fear of deadly violence. But the simple fact is that these pervasive problems are challenging even the combined efforts of education personnel and state and local law-enforcement officers.

The amici States also have a direct interest in ascertaining the proper scope of the constitutional authority possessed by the Federal government in our federal system. At first blush, it may seem paradoxical that any State would file a brief in this case in support of the authority claimed by the Federal government here. But the amici States believe that the historical cooperation and coordination that has existed between the States and the Federal government in the area of law enforcement is both proper and important, and that these longstanding traditions of complementary

efforts should be approved and upheld in this case.

Finally, the validity *vel non* of the Gun-Free School Zones Act presents an issue of direct interest to the States, for two other reasons. First, the continuing battle against the easy movement and use of handguns is being pursued through the complementary and cooperative law enforcement efforts of the States and the Federal government, aimed at both the intrastate and interstate components of such traffic. Second, the successful prosecution of those who carry handguns into school zones for possible use there, whether such convictions occur under federal law or state law, is of immediate importance to the States, since almost all of those individuals are citizens of one or another State and since their activities are inimical to the public welfare in every State that is affected by their actions.

For all of these reasons, the amici States have a direct interest in the issues raised in this case and urge this Court to reverse the erroneous decision of the Fifth Circuit.

ISSUE PRESENTED

Whether the Gun-Free School Zones Act, 18 U.S.C. §922(q), which makes it unlawful to possess or discharge a firearm in a school zone, is a permissible exercise of congressional power under the Commerce Clause in Article I, Section 8 of the Constitution.

SUMMARY OF ARGUMENT

The close nexus between interstate commerce and protection of the public safety, such as by the regulation of firearms, is well established by prior congressional findings and by common reason. Prior congressional findings have conclusively demonstrated the close nexus between interstate commerce and crime legislation, especially with respect to laws regulating the possession and use of firearms. Indeed, the natural link between economic activity and protection of the public safety was widely recognized and accepted long before the Federal Constitution was ever ratified.

The court below erred in determining that Congress must make new and very particularized findings whenever it undertakes any further specific action in an area governed by prior legislation that was enacted within its proper authority. On the contrary, Congress is not required to reiterate or reinforce its previous findings establishing proper federal authority to legislate in an area each time it amends its prior statutes or undertakes any related initiatives in that same area. Indeed, if the courts can determine for themselves that such authority is properly invoked, then Congress need make no such express findings at all.

In general, the area of criminal law enforcement to protect the public safety, which is marked historically by close coordination and mutual assistance between the States and the Federal government, represents the nation's classic traditions of cooperative federalism. State and federal cooperation in this area,

which is desired by citizens and both sovereigns, should be permitted and encouraged by this Court. It should be recognized, moreover, that mutual accommodation of state and federal interests in the area of law enforcement serves the interests of the States as well as those of the Federal government.

ARGUMENT

The Court of Appeals for the Fifth Circuit held that 18 U.S.C. §922(q) is unconstitutional because it exceeds proper congressional authority under the Commerce Clause. It determined that Congress had made no explicit findings tying this statute to interstate commerce, that the statute could not be justified as a measure designed to promote or regulate interstate commerce in any way, and that the statute thus represented an impermissible intrusion into the constitutional realm of the States. Each of these conclusions, however, is incorrect.

I. THE CLOSE NEXUS BETWEEN INTERSTATE COMMERCE AND PROTECTION OF THE PUBLIC SAFETY, SUCH AS BY THE REGULATION OF FIREARMS, IS WELL ESTABLISHED BY PRIOR CONGRESSIONAL FINDINGS AND COMMON REASON.

An initial question in this case is whether there is any nexus in fact between statutory measures enacted to protect the public safety, such as measures to regulate firearms and the violence that often ensues from their possession and use, and Congress's express authority to regulate interstate commerce. Although the court below faithfully traced the historical development of congressional action regulating the transport and use of firearms, it made short shrift of any justifications for such laws. Yet there can be no doubt that a close nexus does exist between these two categories.

A. Prior Congressional Findings Have Shown the Close Nexus Between Interstate Commerce and Crime Legislation, Especially Laws Regulating the Possession and Use of Firearms.

Although criminal legislation enacted by Congress has a venerable history, federal measures to regulate criminal activities involving firearms date from the Depression era. These measures were devised as a partial and inadequate response to the extensive violence that flared up across the country with the expansion of organized crime during Prohibition. Two pieces of firearms legislation were enacted in the 1930s, which imposed controls and restrictions on a specified class of dangerous weaponry, including machine guns, sawed-off shotguns, and the like. *See* National Firearms Act of 1934, 48 Stat. 1236; Federal Firearms Act of 1938, 52 Stat. 1250.

Congress's next foray into this realm did not come until 1968, in the wake of widespread domestic unrest and civil disorder that culminated in riots in major cities and the assassinations of Martin Luther King, Jr. and Robert Kennedy. In that year, Congress passed the Omnibus Crime Control Safe Streets Act which, in part, created a new chapter of the United States Code, 18 U.S.C. §§921-928, and incorporated many of the provisions that had been first enacted in the Federal Firearms Act. Pub. L. No. 90-351, 82 Stat. 197. Only four months later, Congress revisited the same issues in the Gun Control Act of 1968, Pub. L. No. 90-618, 82 Stat. 1213. These two enactments combined to impose broad and novel constraints on the possession and use of firearms that went well beyond their mere transport in interstate commerce.

Among the provisions of these statutes were several that plainly indicated Congress's view that its authority to address the problems posed by increasing gun violence went well beyond the

mere regulation of interstate commerce in firearms and ordnance. First, Congress extended federal licensing requirements to all firearms dealers, whether or not they operated in interstate commerce. Second, Congress criminalized the mere possession of firearms by certain kinds of individuals, including felons, mental incompetents, drug addicts, and illegal aliens. Third, Congress made specific findings that it presented as the justification for its statutory measures.

Among the congressional findings was the following statement that the principal purposes of the legislation were to assist state and local law enforcement and to keep guns away from children:

> The principal purposes of [these measures] are to aid in making it possible to keep firearms out of the hands of those not legally entitled to possess them because of age, criminal background, or incompetency, and to assist law enforcement authorities in the States and their subdivisions in combating the increasing prevalence of crime in the United States.
>
> The ready availability; that is, ease with which any person can anonymously acquire firearms (including criminals, juveniles without the knowledge or consent of their parents or guardians, narcotic addicts, mental defectives, armed groups who would supplant duly constituted public authorities, and others whose possession of firearms is similarly contrary to the public interest) is a matter of serious national concern.

S. Rep. No. 1097, 90th Cong., 2d Sess., at 2-3, *reprinted in* 1968 U.S.C.C.A.N. 2112, 2113-14 (emphasis added). Similar objectives were reflected in the title of the omnibus measure, which stated its aim as: "to assist State and local governments in reducing the incidence of crime, to increase the effectiveness, fairness, and coordination of law enforcement and criminal justice

systems at all levels of government, and for other purposes." *Id.* at 1, *reprinted in* 1968 U.S.C.C.A.N. at 2112.

It is important to note that among the statutory provisions contained in the 1968 legislation, and therefore resting on these congressional findings as its foundation, was 18 U.S.C. §922. That provision is the very section at issue in this case, which was amended in the Gun-Free School Zones Act to add the safe school subsection under fire here. Yet this subsection, which is after all nothing more than an amendment to the underlying statutory section, indeed shares the same objectives and rests on the same findings as did the original enactment of section 922 -- to assist state and local law enforcement officials "in combating the increasing prevalence of crime" and to limit the "ready availability" of firearms "to juveniles without the knowledge or consent of their parents or guardians." S. Rep. No. 1097, *supra*.

Two subsequent amendments to section 922 mirror this approach. In 1986, Congress passed the Firearms Owners Protection Act, Pub. L. No. 99-308, 100 Stat. 449. This legislation added several new subsections to section 922, especially subsection (o), which made it illegal to transfer or possess a machine gun. The legislation did not contain any separate findings to establish any link between these new subsections and Congress's power to regulate interstate commerce, but instead simply relied on the findings contained in the original 1968 enactments. When these provisions were later challenged under the Commerce Clause, this reliance was correctly held to be constitutionally sufficient:

> When it first enacted section 922, Congress found facts indicating a nexus between the regulation of firearms and the commerce power. . . . The 1986 amendments to section 922 added sub-section (o) without substantially altering the findings of fact on this point. . . . [It] is within the authority granted to Congress by the Commerce Clause.

United States v. Hale, 978 F.2d 1016, 1018 (8th Cir. 1992), *cert. denied*, 113 S. Ct. 1614 (1993).

Two years later, Congress added a new subsection (p) to section 922, which banned the manufacture, sale, transfer, or possession of plastic firearms. Undetectable Firearms Act of 1988, Pub. L. No. 100-649, 102 Stat. 3816. Once again, this statute did not rest on any new congressional findings establishing a link to the regulation of commerce. As with the 1986 amendment, moreover, this statute did not by its terms require any link with interstate commerce, banning as it did the mere possession of such items, no matter how they were produced and obtained.

The same approach was followed in the Comprehensive Crime Control Act of 1990, Pub. L. No. 101-647, 104 Stat. 4789. Among its many provisions was another amendment to section 922, adding a new subsection (q), which is being challenged in this case. Once again, the legislation lacked any explicit findings relating its provisions directly to the regulation of commerce. But Congress's view of the intimate relation between crime and economic activity was articulated when it stated that the law "is intended to provide a legislative response to various aspects of the problem of crime in the United States. The damage inflicted by criminals -- whether it be physical, emotional, or monetary -- takes a heavy toll on our society." H.R. Rep. No. 101-681(I), 101st Cong., 2d Sess., at 69, *reprinted in* 1990 U.S.C.C.A.N. 6472, 6473.[1] No better statement is needed to show the undeniable link between the prevention of crime, especially violent crime involving firearms, and the regulation and promotion of commercial activity in our society.

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[1] The same congressional report also quoted President Bush's statement, in urging passage of his proposal to combat violent crime, that "assuring the physical safety of our citizens and inhabitants is among the very highest responsibilities of government." H.R. Rep. No. 101-681(I), at 69, *reprinted in* 1990 U.S.C.C.A.N. at 6473.

B. A Natural And Inevitable Link Between Economic Activity and Protection of the Public Safety Exists Regardless of Congressional Findings.

Even if Congress had never made any findings about the direct link between its power to regulate commerce and laws regulating the possession and use of firearms, the more general link between congressional power to regulate commerce and the enactment of necessary crime legislation is manifest in any event. Indeed, it was broadly emphasized by many of the writers whose works and ideas were relied upon by the framers of the Constitution.

The obvious natural link between economic activity and protection of the public safety was perhaps described most fully and accurately by Thomas Hobbes. Writing in *Leviathan* about the consequences of public disorder, "wherein men live without other security, than what their own strength, and their own invention shall furnish them withall," he chillingly observed:

> In such condition, there is no place for Industry; because the fruit thereof is uncertain: and consequently no Culture of the Earth; no Navigation, nor use of the commodities that may be imported by Sea; no commodious Building; no Instruments of moving, and removing such things as require much force; no Knowledge of the face of the Earth; no account of Time; no Arts; no Letters; no Society; and which is worst of all, continuall feare, and danger of violent death; And the life of man, solitary, poore, nasty, brutish, and short.

Id., Part I, ch. 13. He thus called for an omnipotent sovereign power to enforce rigid obedience to the law and make possible the improving features of ordinary civil and commercial society.

These same points were adapted and elaborated by John Locke in his theories of the state of nature and the origins of civil government. After contending that human labor gives value to every thing that is found in nature, he observed that "a King of a large fruitful Territory [in 17th century America] feeds, lodges, and is clad worse than a day Labourer in England." John Locke, *Of Civil Government*, ch. V, §41. The reason for this disparity, again, was found to lie in the dependence of economic activity on reliable assurances of personal security. For "the enjoyment of the property he has in [the state of Nature] is very unsafe, very unsecure. This makes him willing to . . . joyn in Society with others who are already united, or have a mind to unite, for the mutual Preservation of their Lives, Liberties and Estates." *Id.*, ch. IX, §123. "The great and chief end, therefore, of Mens uniting into Commonwealths, and putting themselves under Government, is the Preservation of their Property." *Id.*, ch. IX, §124.

And again, as the founding of our nation moved forward, Adam Smith was presenting this very point in *The Wealth of Nations*:

> It is only under the shelter of the civil magistrate that the owner of that valuable property, which is acquired by the labour of many years, or perhaps of many successive generations, can sleep a single night in security. He is at all times surrounded by unknown enemies, whom, though he never provoked, he can never appease, and from whose injustice he can be protected only by the powerful arm of the civil magistrate continually held up to chastise it. The acquisition of valuable and extensive property, therefore, necessarily requires the establishment of civil government.

Id., Book V, Part II. In this manner, public order makes possible a broad system of exchange, which encourages commercial activity replete with innovations such as the division of labor, thereby ultimately producing the wealth of nations.

These are some of the grand yet common principles of political philosophy upon which our Constitution is based. The simple point, however, is that the power to regulate commerce must include, among the powers "necessary and proper" to its exercise, U.S. Const., art. I, §8, the legitimate authority to protect the public safety by enacting criminal laws to address any problem that Congress may reasonably find to be of national dimension.

This generous view, indeed, mirrors the position adopted by this Court in *Wickard v. Filburn*, 317 U.S. 111 (1942). In that case, the Court confronted a federal marketing quota that was applied to a farmer who grew only a small amount of wheat primarily for consumption on his own farm, with some to be sold intrastate. The Court specifically held that if the activity addressed by the statute had an effect on interstate commerce, it was subject to congressional regulation, whether any such effect was defined as "direct" or "indirect." *Id.* at 125. Because Congress could reasonably, if expansively, conclude that the regulated activity could conceivably affect interstate commerce in wheat, then it could regulate even incidental uses of this item. *Id.* at 118-29. Similarly, in this instance Congress has acted to regulate the use made of firearms in particular circumstances, which not only may affect the national market for such weaponry, but also affects public security. And public security is basic to the prosperity of any economic marketplace whatsoever.

In addition, Congress is acting here to curb the growing tide of gun-related violence in this country, which clearly has a fairly direct impact on interstate commerce and travel. *Cf. Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 252-53 (1964) (race discrimination in hotels affects interstate commerce). "So long as the activity regulated has an effect on interstate

commerce," it is within Congress's power to regulate that activity. *United States v. Johnson*, 1994 U.S. App. LEXIS 8370, at *8 (6th Cir. Apr. 22, 1994) (upholding federal carjacking statute, 18 U.S.C. §2119, because it is "obvious that carjackings as a category of criminal activity have an effect on interstate travel and the travel of foreign citizens to this country").

This connection can also be shown through statistical data. As another court has noted in upholding the constitutionality of 18 U.S.C. §922(o), which prohibits the possession of machine guns:

> Congress specifically found that at least 750,000 people had been killed in the United States by firearms between the turn of the century and the time of the Act's enactment. It was thus reasonable for Congress to conclude that the possession of firearms affects the national economy, if only through the insurance industry.

United States v. Evans, 928 F.2d 858, 862 (9th Cir. 1991). Similarly, a congressional report on the Brady Handgun Violence Prevention Act, enacted by Congress earlier this year, cites a study that estimates the direct medical costs in this country of injuries relating to firearms at $1,400,000,000 annually, and the indirect economic cost of lost productivity due to such injuries at $19,000,000,000 annually. *See* H.R. Rep. No. 103-344, 103rd Cong., 1st Sess., at 8, *reprinted in* 1993 U.S.C.C.A.N. 1984, 1985. And the costs of such violence perpetrated by and against children, who may lose their whole futures, economic and otherwise, in a single incident through death, severe injuries, or extended incarceration, are so incalculable as to defy such documentation.

Thus, even if one focuses narrowly on the specific problems addressed by gun-free school zones, separate and apart from the broader issues posed by regulation of the possession and use of firearms, and apart from the even broader issues posed by

the insistent need for action to protect the public safety, the essential nexus between this legislation and interstate commerce remains. This law is part of a larger congressional response to the national crime problem, especially the growing crisis of gun violence in this country. That response has been presented, revised, and re-revised now for decades. The specific provision for gun-free school zones is but one piece of that larger response, and is germane to problems that Congress has found to warrant action as it pursues the larger goal of cooperating with the States to protect the public safety. That goal is both an end in itself and an indispensable means to promoting interstate commerce. As such, this legislation falls well within the legitimate constitutional authority of Congress under Article I, Section 8.

II. CONGRESS IS NOT REQUIRED TO REITERATE OR REINFORCE ITS PREVIOUS FINDINGS ESTABLISHING PROPER FEDERAL AUTHORITY TO LEGISLATE IN A PARTICULAR AREA EACH TIME IT AMENDS ITS PRIOR STATUTES OR UNDERTAKES ANY RELATED INITIATIVES IN THAT SAME AREA.

This Court's prior decisions do not impose a strict standard that Congress must satisfy in order to establish its constitutional authority to legislate in a particular area. Instead, the Court has held that such conflicts "are wisely left under our system to resolution by the Congress under its more flexible and responsible legislative process. Such conflicts rarely lend themselves to judicial determination." *Wickard*, 317 U.S. at 129.

Accordingly, this Court has held that congressional authority under the Commerce Clause reaches "those activities affecting commerce." *Perez v. United States*, 402 U.S. 146, 150 (1971). "Where the class of activities is regulated and that class is within the reach of federal power, the courts have no power 'to

excise, as trivial, individual instances' of the class." *Id.* at 154 (emphasis in original). Thus, if the class of activities is shown to have an effect on interstate commerce, then Congress can properly regulate with respect to any particular activity within that class without having to prove that the particular activity by itself has any direct or indirect effect on interstate commerce.

Indeed, in *Perez*, the Court expressly cautioned that Congress need not "make particularized findings in order to legislate." *Id.* at 156. If Congress reasonably could find, therefore, that the class of activities regulated affects interstate commerce, then its constitutional authority is properly established. The appropriate judicial inquiry is thus quite deferential. And if Congress does make findings in this regard, those legislative determinations are entitled to be given substantial weight by a reviewing court. *Id.; see also Evans*, 928 F.2d at 862; *Hale*, 978 F.2d at 1018.

Set in this perspective, the ruling below is plainly in error because it does not adhere in letter or spirit to the analytical approach laid down by this Court. In essence, the court below nitpicked the federal statutory enactments that have resulted in 18 U.S.C. §922, disassembling and isolating its various parts in an conscious effort to achieve the goal of invalidating its new subsection (q). The proper approach instead would be to view this statutory section as a whole, and to recognize that Congress's findings, presented at different points in the evolving development of this criminal statute, provide a strong foundation for its constitutional vitality. For Congress has found, over more than two decades, that all manner of activities involving firearms affect interstate commerce, some directly and others indirectly, but all of them potently.

Indeed, the approach embodied in the ruling below does not give sufficient respect to Congress as a coordinate branch of the Federal government. If Congress once has made legislative findings that suffice to authorize its undertaking to regulate a

particular class of activities, then it is pointless and even demeaning to hold that Congress must repeat the very same findings, or variations upon them, each time it goes back to amend or revise its earlier enactments. Not only would such a requirement waste valuable legislative resources that would be better spent on clarifying and harmonizing the statutory language, but also it would serve no real purpose since, as this Court has held, no higher authority obliges Congress to make any particularized findings at all before it can legislate. *Perez*, 402 U.S. at 156.

Some might conclude, as the court below apparently did, that the statutory restrictions here on possessing or discharging firearms within a school zone constitute relatively "trivial" instances of the class of activities involving firearms that create an overall effect on interstate commerce. Yet Congress apparently did not agree, and as gun violence and injuries to children continue to mount across the country, this position will be harder to maintain in any event. But even if it were so, *Perez* dictates that the statute must be upheld as long as the broader class of activities are within the proper scope of congressional legislative authority. *See* 402 U.S. at 154. And if practical concerns are to be raised about the law instead, then this Court supplied the ready answer in *Wickard*: "with the wisdom, workability, or fairness, of the plan of regulation we have nothing to do." 317 U.S. at 129.

III. THE AREA OF CRIMINAL LAW ENFORCEMENT TO PROTECT THE PUBLIC SAFETY, WHICH IS MARKED HISTORICALLY BY CLOSE COORDINATION AND MUTUAL ASSISTANCE BETWEEN THE STATES AND THE FEDERAL GOVERNMENT, REPRESENTS THE NATION'S CLASSIC TRADITIONS OF COOPERATIVE FEDERALISM.

In the United States, criminal law enforcement is perhaps the single realm in which state and local officials have coordinated most effectively and consistently with their federal counterparts. Throughout our history, the federal criminal laws have been understood to supplement state criminal law, and the overlapping jurisdictions thus created have been mutually and harmoniously adjusted. This area of government action thus presents one of the fine examples of cooperative federalism, where differences and difficulties have been resolved not only in the political arena, but also at the ordinary levels of everyday administration. This Court itself has described the standard historical approach as "the entirely commendable practice of state and federal agents to cooperate with each other in the investigation and detection of criminal activity." *Elkins v. United States*, 364 U.S. 206, 211 (1960). For this reason, the amici States would counsel that this Court should proceed with great caution before acting to invalidate criminal enactments on grounds of so-called constitutional federalism.

A. State and Federal Cooperation in the Area of Law Enforcement, Which Is Desired by Citizens and Both Sovereigns, Should Be Permitted and Encouraged by This Court.

Throughout our nation's history, federal officials and state and local law enforcement officers have teamed up to conduct

investigations, gather facts, identify and pursue suspects, make arresting and charging decisions, and prepare prosecutions for crime. These cooperative efforts are commonplace today, and reflect the same kinds of efforts that also occur on a daily basis between state and local law enforcement officials. In addition, further coordination occurs regularly on such matters as detainers, extraditions, sentencings, confinement and treatment of prisoners, and the filing of legal briefs such as in this very case.

Indeed, at times this close cooperation between federal and state officials has posed doctrinal difficulties for this Court, such as in the so-called "silver platter" cases that arose under the Fourth Amendment. In such cases, the federal courts for a time permitted the introduction of evidence in federal cases that was obtained in a state search by means which, if engaged in by federal officers, would constitute a violation of the Fourth Amendment and require the bar of the exclusionary rule to be applied. *See, e.g., Feldman v. United States*, 322 U.S. 487, 492 (1944); *Byars v. United States*, 273 U.S. 28, 33 (1927). This doctrine was ultimately abolished by this Court for a variety of reasons in *Elkins*. *See id.*, 364 U.S. at 223-24. Nonetheless, the Court still cautioned in the decision that "[f]ree and open cooperation between state and federal law enforcement officers is to be commended and encouraged." *Id.* at 221.

The supplemental spheres of state and federal criminal law thus present an overall example of "cooperative federalism," which "allows the States . . . to enact and administer their own [laws,] structured to meet their own particular needs," and permits the Federal government to do the same. *Hodel v. Virginia Surface Mining & Reclamation Ass'n, Inc.*, 452 U.S. 264, 289 (1981). The enactment of criminal laws by Congress does not impose any unnecessary burdens on the States, and it maintains clear lines of

political accountability between the functions of the States and the Federal government. *See, e.g., Federal Energy Regulatory Comm'n v. Mississippi*, 456 U.S. 742, 782-84 (O'Connor, J., dissenting).[2]

B. Mutual Accommodation of State and Federal Interests in the Area of Law Enforcement Serves the Interests of the States As Well As Those of the Federal Government.

The amici States would suggest that, for the most part, the States have welcomed the additional resources and assistance that follow from congressional attention to the larger crime problems of our society. In this area, Congress is not seeking to act on the States as States, but is directly legislating upon individual citizens, in harmony with the proper framework of our system of federalism. *See, e.g., Hodel*, 452 U.S. at 286; *see also The Federalist*, Nos. 15, 16 & 27 (A. Hamilton); *FERC v. Mississippi*, 456 U.S. at 791-96 (O'Connor, J., dissenting). Thus, congressional action in the area of criminal law enforcement is most accurately seen as supplemental to state action rather than as intruding upon it or obstructing it.

In addition, the area of criminal law enforcement is one where potential differences and necessary adjustments between federal and state action have been managed successfully through the political processes. *Cf. Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528, 550-554 (1985); *see also* Wechsler, *The*

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[2] This Court has held that the considerations raised above in the text are germane to cases involving challenges raised under the Tenth Amendment. As the Court has also noted, however, the proper legal analyses under the Tenth Amendment and under Article I, Section 8 (especially the Commerce Clause) are mirror images of one another. *New York v. United States*, 112 S. Ct. 2408, 2417 (1992).

Political Safeguards of Federalism: The Role of the States in the Composition and Selection of the National Government, 54 Colum. L. Rev. 543 (1954). The efficacy of the safeguards found in this mechanism are shown by the restrained manner in which possible preemption issues have been handled both by Congress and by this Court.

For the most part, it has been recognized that standard doctrines do not and should not prevent the States from prosecuting where the same act constitutes both a federal offense and a state offense under the police power. *See, e.g., Gilbert v. Minnesota*, 254 U.S. 325, 331-332 (1920). Congress is extremely sparing in its attempts to preempt state criminal laws, and this Court likewise has been reluctant to find that even provisions governing the very same conduct should be applied to find federal preemption of state authority. The exceptions to this rule, which are rare and indeed extraordinary, only tend to confirm its solid foundations. *See, e.g., Pennsylvania v. Nelson*, 350 U.S. 497 (1956) (holding that federal law punishing sedition against the United States preempts state laws governing sedition against the United States but not sedition against the State). In the instant case, for example, Congress expressly disclaimed any intent to preempt state law by this enactment. 18 U.S.C. §922(q)(3).

In this particular case, the amici States believe it is likely that the federal legislation at issue here will prove to be complementary and beneficial to continuing state efforts in this same area of assuring safer schools for our children. The dangers posed by gun-related violence in the schools are becoming severe, and there is frankly no good reason why this Court should interject a wholly unnecessary constitutional obstacle to further cooperation between the States and the Federal government in addressing this urgent problem.

CONCLUSION

For the foregoing reasons, as well as those set forth in the Brief for Petitioner, this Court should reverse the decision of the Court of Appeals for the Fifth Circuit and reinstate Respondent's original conviction under 18 U.S.C. §922(q).

Respectfully submitted,

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